

NO. 49039-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

V.

DEREK M. JETER,

Petitioner.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

In its response, the State propounds a hopelessly byzantine, labyrinthine, tortured interpretation of RCW 13.50.260(1)(a). Brief of Respondent at 6-20. Contrary to the State's assertion, a review of the plain language of the statute demonstrates that it is plainly written, easily understood, and that a full adversarial sealing hearing, including notice to the parties, is mandated.

A quick review of the statute: RCW 13.50.260 governs sealing juvenile criminal records. Previously, former RCW 13.50.050 was the statute that controlled the sealing of juvenile records until June 2014. Following that date, relevant sections of RCW 13.50.050 addressing sealing hearings and sealing juvenile offender records were recodified in an entirely new section – RCW 13.50.260. See Laws of 2014, ch. 175, §§ 3–4.

This Court employs statutory interpretation “to determine and give effect to the intent of the legislature.” *State v. Evans*, 177 Wn.2d 186, 192, 298 P.3d 724 (2013) (quoting *State v. Sweany*, 174 Wn.2d 909, 914, 281 P.3d 305 (2012)). The fundamental goal of statutory interpretation is to discern and implement the legislature's intent. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). When interpreting a statute, courts look first

to the statute's plain meaning. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). “Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

In order to determine legislative intent, the reviewing court first looks at the plain language of the statute, considering the text of the provision in question, the context of the statute, and the statutory scheme. *Evans*, 177 Wn.2d 192. Undefined terms are given their plain and ordinary meaning unless a contrary legislative intent is indicated. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). A statute is ambiguous if the language of the statute is susceptible to more than one reasonable interpretation. *Ervin*, 169 Wn.2d at 820. A reviewing court strives to resolve the ambiguity and determine the legislature's intent by considering other, extrinsic indicia of legislative intent, including principles of statutory construction, legislative history, and relevant case law. *Ervin*, 169 Wn.2d at 820.

The legislature's intent in RCW 13.50.260(1)(a) is evidenced by the plain meaning of the language at issue: the phrase “regular sealing **hearings**.” (Emphasis added). The statute provides:

[t]he court shall hold regular sealing hearings. During these regular sealing hearings, the court shall administratively seal an individual's juvenile record pursuant to the requirements of this subsection unless the court receives an objection to sealing or the court notes a compelling reason not to seal, in which case, the court shall set a contested hearing to be conducted on the record to address sealing. . . .

If a word is not specifically defined by statute, a reviewing court derives the plain meaning of non-technical words using dictionary definitions. *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). Webster's defines "hearing" as an "opportunity to be heard, to present one's side of a case, or to be generally known or appreciated," "a listening to arguments," and "a preliminary examination in criminal procedure." Webster's Seventh New Collegiate Dictionary, 383 (1966).

Black's Law Dictionary defines "hearing" as "[p]roceeding of relative formality, (though generally less formal than a trial) generally public, with definite issues of fact or of law to be tried, in which witnesses are heard and parties proceeded against have right to be heard, and is much the same as a trial and may terminate in final order." Black's Law Dictionary, 649 (5th Ed. 1979). These definitions show that by use of the word "hearing," the legislature intended that RCW 13.50.260(1)(a) provide for full adversarial hearings – specifically denoted as plural –

which necessitates notice to the parties, an opportunity to be heard, and opportunity to present evidence in support of one's side of the case in support of sealing. The State's interpretation contradicts the legislative intent by precluding an adversarial hearing on sealing in cases in which there is an alleged reason not to administratively seal a juvenile's records. As set forth in RCW 13.50.260(1)(a) if there is a reason not to administratively seal a juvenile's record, "the court shall set a contested hearing to be conducted on the record to address sealing."

Even if this Court determines that after consideration of the plain language of the statute, the meaning of RCW 13.50.260(1)(a) remains ambiguous, legislative history, and the statutory scheme also reveals the legislature's intent. The legislature's stated intent behind its 2014 chapter 13.50 RCW amendments supports interpreting RCW 13.50.260(1)(a) in a way that resolves ambiguities in favor of the juvenile seeking his or her record sealed:

[I]t is the policy of the state of Washington that the interest in juvenile rehabilitation and reintegration constitutes compelling circumstances that outweigh the public interest in continued availability of juvenile court records. The legislature intends that juvenile court proceedings be openly administered but, except in limited circumstances, the records of these proceedings be closed when the juvenile has reached the age of eighteen and completed the terms of disposition.

Laws of 2014, ch. 175, § 1(2). The legislature designed the mechanism for sealing juvenile records specifically so juveniles can overcome prejudice and reintegrate into society. *Id.* at § 1(1). Because Washington's goal for its juvenile justice system is rehabilitation and reintegration rather than punishment, “[t]he legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records[,] and [Washington] court[s] ha[ve] always given effect to the legislature's judgment in the unique setting of juvenile court records.” *State v. S.J.C.*, 183 Wn.2d 408, 417, 352 P.3d 749 (2015). See also, *State v. J.C.*, 192 Wn.App. 122, 366 P.3d 455 (2016) (addressing legislative intent of RCW 13.50.260(4)(a)(v)).

The use of the phrase “regular sealing hearing,” in conjunction with the ordinary meaning of the word “hearing,” invokes the standard due process rights of notice and opportunity to be heard in a full adversarial hearing. The statutory scheme as a whole, and the legislature's stated intent behind the 2014 amendments to chapter 13.50 RCW, support interpreting RCW 13.50.260(1)(a) as requiring trial courts to conduct a full, formal hearing in order to determine eligibility for sealing in cases in which there is a reason to not administratively seal the record.

Assuming *arguendo* that the principles of statutory construction and an analysis of the legislative history and statutory scheme do not

resolve the claimed ambiguity in RCW 13.50.260(1)(a), the statute must be considered an ambiguous criminal statute, requiring application of the rule of lenity. When faced with an ambiguity and finding no clear guidance from the legislature, courts may look to the rule of lenity. The rule of lenity dictates that a reviewing court must construe a statute strictly against the State when faced with an ambiguous statute and the court finds no direction from the legislature. *State v. Roberts*, 117 Wn.2d 576, 586–87, 817 P.2d 855 (1991); *State v. Gore*, 101 Wn.2d 481, 485–86, 681 P.2d 227, 39 A.L.R.4th 975 (1984). In this case, if analysis still does not clearly show the legislature's intent, the rule of lenity requires the Court to interpret the statute in Derek Jeter's favor. *Evans*, 177 Wash.2d at 193, 298 P.3d 724.

B. CONCLUSION

For the reasons stated herein, and in the appellant's opening brief, the appellant respectfully requests this Court reverse the ruling of the superior court and remand this case - as well as his co-appellant's case - for a contested sealing hearing incorporating the notice requirements and full adversarial process inherent in hearings, as required by RCW 13.50.260(1)(a).

DATED: April 18, 2017.

Respectfully submitted,
THE TILLER LAW FIRM

A handwritten signature in black ink, appearing to read "Peter B. Tiller", written over a horizontal line.

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CERTIFICATE

I certify that I sent by JIS a copy of the Reply Brief of Derek M. Jeter to the Clerk of Court of Appeals and to Ms. Michelle Hyer and Jason Ruyf, Deputy Prosecuting Attorneys, Emailed a copy to co-appellant's Attorney, Bret Roberts, and mailed copies, postage prepaid on April 18, 2017, to appellant, Derek Jeter:

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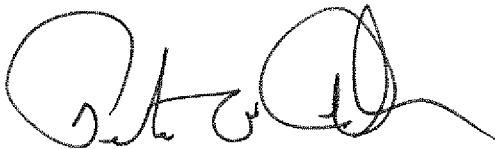
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